IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 365 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

MANHARLAL VRUJLAL KANADA

Appearance:

Mr K G Sheth, APP for Petitioner

Notice served to Respondent No. 1, 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 17/04/2001

ORAL JUDGEMENT

The petitioner State of Gujarat has preferred this Criminal Revision Application under section 397 of the Code of Criminal Procedure Code, 1973 (for short, 'the Code') challenging the judgment and order dated

1.5.2000 recorded by the learned Chief Judicial Magistrate at Bhavnagar in Criminal Case No.4373/98 under which the learned Chief Judicial Magistrate discharged the present respondent from offence punishable under the Prevention of Food Adulteration Act, 1954 (for short, 'the Act'). The case of the original complainant-Food Inspector before the trial court was that he had gone to the shop of the respondent situated at Bhavnagar and demanded a sample of chilly powder. That accordingly, a packet of chilly power was supplied to the original complainant. On verification, he found that the packet contained a label of pickle masala (red masala). That an enquiry was made by the original complainant to the effect that he wanted chilly powder and the packet was named as pickle masala. That at that stage, the concerned respondent clarified that chilly powder was there in the said packet and it was being sold as pickle masala. That accordingly sample was purchased, price was paid and it was packed and sealed in accordance with the rules. That thereafter, the sample was sent for analysis to the Public Analyst and it was the opinion of the public analyst that it was not chilly powder but it contained something else other than chilly powder. In other words, the said packet contained a food which was not chilly powder only but there was salt with edible oil mixed with chilly powder. On the strength of the said report, the original complainant, the Food Inspector filed the aforesaid complaint which was registered as criminal case no.4373/98. During the course of the prosecution, the present respondents submitted application before the trial court stating that no offence was made out and they should be discharged. The learned Magistrate heard the parties and came to a decision that no offence was made out and, therefore, he was pleased to pass an order discharging the present respondent from the aforesaid offence by judgment and order dated 1.5.2000.

2. Feeling aggrieved by the said judgment and order of the trial court, the State of Gujarat has filed the present Criminal Revision Application before this court under section 397 of the Code. It has been contended here that though offence was made out prima facie, the learned Magistrate has committed illegality in appreciating the said position properly. That the learned Magistrate had erred in law in discharging the present respondent. That the learned Magistrate has not properly appreciated the position that the original complainant had demanded and purchased chilly powder. That instead of supplying chilly powder to him, the respondent concerned had supplied a food which contained

not only chilly powder but it also contained salt and edible oil, meaning thereby that the packet sold to the original complainant was not chilly powder only but there was a clear case of adulteration and violation of provision contained in rule 32-A of the Food Adulteration Rules framed under the said Act. It is further contended that the packet did not contain batch no. etc. as per the requirement of Rule 32-E of the said rules. It is further contended that there was clear case of adulteration that it was not chilly powder but it was a food containing chilly powder mixed with salt and edible oil. Therefore, it was a clear case of adulteration. On the aforesaid set of facts, the aforesaid complaint was filed which resulted into order of discharge of the present respondents.

3. Rule was issued and it was duly served. Other respondents being original accused before the trial court did not think it proper to appear before this court in response to the service of Rule. I have heard Mr K G Sheth, learned APP and have perused the papers.

4. Now it has been submitted by Mr K G Sheth on behalf of the revision petitioner that the original complainant had demanded chilly powder and when a packet with label of pickle masala was supplied to him, the complainant was surprised and he made it clear that he wanted chilly powder and not anything else. That at this stage, the concerned respondent assured that it was chilly powder in the packet and, therefore, the original complainant purchased the said sample of chilly powder though it was printed on packet as pickle masala. It has been argued by Mr K G Sheth, that even the panchnama prepared by the original complainant supported the case of the complainant and the receipt obtained further supported the case of the complainant that he had demanded chilly powder only.

5. Whether or not the original complainant had actually demanded chilly powder and as to whether or not the concerned respondent had assured that it was chilly powder in the said packet, though there was label of pickle masala thereon, is again a question of fact which is required to be appreciated, dealt with and decided in accordance with the evidence that may be led before the trial court. The learned Magistrate has taken it for granted that since there was a name of pickle masala on the packet itself and since the packet contained pickle masala, there was no misbranding. Considering the fact alleged in the complaint and supported by the panchnama it is clear that there is an allegation on record that

the original complainant required sample of chilly powder and not pickle masala. In that view of the matter, there is prima facie case of misbranding within four corners of Rule 32(A) of the Rules made under the said Act. Therefore, the learned Magistrate has committed illegality in discharging the respondents on the ground that there was no misbranding.

6. With respect to the second offence, the complainant has stated that batch number and other requirements were disclosed on the packet in question. The learned Magistrate has considered this aspect of the matter. The original accused had submitted before the trial court that the said provisions have been struck down by the Supreme Court and, therefore, it was not necessary for the present respondents to clarify the said position. On the aforesaid aspects, it is found that the complainant has come out with a case that there was subsequent amendment in the rules and the present label mark is not in accordance with the amended rules which was amended as back as in 1989. This again is a question of fact which is required to be dealt with on appreciation of provisions of rule, qua the sample sold and supplied to the original complainant by the concerned respondent.

7. Therefore, it can be said that the learned Magistrate has not properly appreciated this position and considering the question depending upon the submission of the original complainant that the rule has been amended, the learned Magistrate is required to consider the amended rule and the applicability thereof to the facts of the case before him. Any way, the finding of the learned Magistrate is found to be illegal since there was non-application of mind with respect to the said provision of rule which is said to have been amended in 1989.

8. Then the next point is with respect to adulteration. As said above, when chilly powder was demanded and instead, pickle masala was supplied and when the food supplied was not simply chilly powder but it was chilly powder along with salt and edible oil, then it cannot be said that no offence is prima facie, made out. Again it would depend upon the facts of the case with respect to the food demanded by the original complainant and sold and supplied by the concerned respondent. It would also depend upon appreciation of evidence with respect to the statement made by the concerned respondents at the time of the aforesaid supply. It would also depend upon the appreciation of evidence of

panchnama and receipt on record.

9. It, therefore, can be said that the learned Magistrate was required to appreciate the aforesaid factual situation and the present respondent could not have legally been discharged on the sole basis of the defence of the original accused. In above view of the matter, it is found that the judgment and order of the learned Magistrate discharging the present respondent are not found to be legal and when the order of the learned Magistrate is not found to be legal, it is necessary for this court to interfere with it at this level in this revision in order to substantial justice to the parties.

6. In the aforesaid view of the matter, this Criminal Revision Application is allowed. The judgment and order of the learned Magistrate dated 1.5.2000 in criminal case no.4373/98 are quashed and set aside. The matter is remanded back to the trial court for trial according to law. The learned Chief Judicial Magistrate shall permit the parties to lead evidence in proof of their rival cases. The learned Magistrate shall dispose of the matter on merits according to law as early as possible and preferably within six months from the date of receipt of this order by him.

Rule is made absolute to the aforesaid extent.

17.4.2001 [D P Buch. J.]
msp